

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Review of the Emergency Alert System;	)	
	)	
Independent Spanish Broadcasters	)	EB Docket No. 04-296
Association, the Office of Communication	)	
Of the United Church of Christ, Inc., and the	)	
Minority Media and Telecommunications	)	
Council, Petition for Immediate Relief	)	

To: David S. Turetsky, Chief  
Public Safety and Homeland Security Bureau

**PETITION FOR TEMPORARY WAIVER**

Pursuant to 47 C.F.R. § 1.3 and 47 C.F.R. § 11.52(d)(4), this petition is submitted on behalf of Cable America Missouri, L.L.C. ("Cable America" or the "Company") to request temporary waivers for 4 of its very smallest cable systems (the "Waiver Systems") from compliance with the Emergency Alert System ("EAS") requirements in Section 11.56 of the Commission's rules. Section 11.56 requires EAS Participants to be able to receive alerts formatted with the Common Alerting Protocol ("CAP") by June 30, 2012.<sup>1</sup> The 4 Waiver

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<sup>1</sup> The June 30, 2012 compliance deadline was adopted in the Commission's *EAS Fourth Report and Order*. See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, EB Docket No. 04-296, *Fourth Report and Order*, 26 FCC Rcd 13710 (2011) ("*EAS Fourth Report and Order*"). In its *EAS Fifth Report and Order*, the FCC revised its Part 11 Rules to specify the manner in which EAS Participants must be able to receive alert messages formatted in the CAP. See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, EB Docket No. 04-296, *Fifth Report and Order*, 27 FCC Rcd 642 (2012) ("*EAS Fifth Report and Order*").

Systems (*see* **Appendix A**) are remote cable headends, each of which serves fewer than 165 subscribers. Cable America respectfully seeks six month waivers for these sites because they lack the broadband Internet access necessary to reliably receive CAP-formatted alerts.

Cable America has worked diligently to bring all of its cable headends into compliance with the Commission's new CAP requirements. The Company has invested tens of thousands of dollars toward CAP-compliant hardware and software upgrades. Cable America personnel have also invested countless hours installing and testing new devices to ensure their capacity to receive, convert and process CAP-formatted messages in accordance with the Commission's rules. More than 90 percent of Cable America's subscriber base will have access to CAP-formatted alert messages by the June 30, 2012 deadline. As discussed below, the remaining 4 Waiver Systems are among Cable America's most remote cable headends, and do not currently have the broadband Internet access necessary to receive CAP formatted messages.

#### **I. The Waiver Systems Do Not Have Broadband Internet Access**

Cable America respectfully requests a six month waiver from Section 11.56 of the Commission's rules for the 4 headends listed in Appendix A. Pursuant to Section 1.3, the Commission may waive its rules for good cause shown.<sup>2</sup> The Commission may also exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and grant of a waiver would not undermine the policy served by the rule.<sup>3</sup>

Cable America respectfully submits that there is good cause to grant the temporary relief requested here. In its *EAS Fifth Report and Order*, the Commission identified broadband

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<sup>2</sup> 47 C.F.R. 1.3. *See also* *Northeast Cellular Telephone Co. L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC has authority to waive its rules if there is good cause to do so.").

<sup>3</sup> *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd* 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

Internet as the “primary method for distributing CAP messages.”<sup>4</sup> The FCC further recognized that “the physical availability of broadband Internet access would be a physical predicate for compliance with the requirement that EAS Participants be able to receive CAP-based alerts.”<sup>5</sup> Recognizing that some cable systems would be unable to comply with the June 30, 2012 deadline due to lack of broadband Internet access, the FCC concluded that “the physical unavailability of broadband Internet service offers a presumption in favor of a waiver.”<sup>6</sup>

Cable America satisfies the presumption set forth in the *EAS Fifth Report and Order* because, as noted above, the Waiver Systems currently do not have access to broadband. Each of these cable headends is located in a rural area, and Cable America’s engineers have been unable to identify a feasible solution to obtain Internet access. Because receipt of CAP-formatted messages is not possible without broadband Internet access, a waiver from Section 11.56 would serve the public interest. Indeed, the Commission concluded in its *EAS Fifth Report and Order* that it would not “be appropriate to require EAS Participants to purchase and install equipment that they could not use.”<sup>7</sup>

## **II. Cable America’s Subscribers at the Waiver Systems Have Access to Emergency Alerts Through Legacy EAS Equipment**

In its *EAS Fifth Report and Order*, the Commission underscores that to the extent that waivers are granted, the subject systems “would be required to continue to operate its legacy EAS equipment.”<sup>8</sup> Cable America is wholly prepared to comply with the Commission’s

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<sup>4</sup> *EAS Fifth Report and Order* at ¶152.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*


<sup>8</sup> *EAS Fifth Report and Order* at ¶ 152.

direction. Each of the Waiver Systems already has legacy EAS equipment that is installed and fully operational. As such, the small percentage of Cable America's subscribers served by the Waiver Systems will continue to have access to timely and effective emergency warnings.

### **III. Conclusion**

Cable America submits that it has shown good cause to grant waivers to 4 of its smallest and most remote cable systems, each of which serve fewer than 165 subscribers. These locations have access to emergency warnings through legacy EAS equipment, but broadband Internet access is currently not available. As a result, the Waiver Systems are not able to receive CAP-formatted messages as required under Section 11.56.

Respectfully submitted,

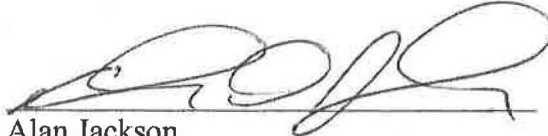
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June 28, 2012

**CERTIFICATION**

I, Alan Jackson, Vice President, Cable America Missouri, L.L.C, hereby certify that statements made in the foregoing Petition for Waiver are made in good faith and are true and correct to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read 'Alan Jackson', written over a horizontal line.

Alan Jackson  
Vice President  
Cable America Missouri, L.L.C.

June 27, 2012

## **Appendix A**

### **Cable America Systems Seeking 6 Month Waivers From CAP Compliance (Until December 31, 2012)**

<b><u>Headend</u></b>	<b><u>Subscribers</u></b>
Grand Marais, MI	104
Seney, MI	12
Shingleton, MI	88
Lake Sherwood Estates, MO	163